

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Petitions for Declaratory Ruling Filed by
Beehive Telephone Company and Database
Services Management, Inc.

Toll Free Access Codes

NSD File Nos. 99-87 & 99-88

CC Docket No. 95-155

COMMENTS OF THE BELL OPERATING COMPANIES

The Bell operating companies, Bell Atlantic,¹ BellSouth, SBC and U S WEST, file these comments to respond to the legal questions raised by the Commission in its Public Notice in this proceeding.

Background

The Bell companies currently provide service management services for toll-free service ("SMS/800 service") under tariff. This was done at the specific direction of the Commission.²

The Bell companies have contracted with other companies in order to provide this service. For example, the Bell companies have used "help desk" and other services provided, initially, by Lockheed Martin and, more recently, by Sykes Enterprises. They have also

¹ The Bell Atlantic telephone companies are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company and New England Telephone and Telegraph Company.

² *Provision of Access for 800 Service*, 8 FCC Rcd 1423 (1993) ("CompTel Declaratory Ruling").

contracted with DSMI, a subsidiary of Telcordia Technologies (née Bellcore), to perform a variety of general oversight and management functions.

This system has worked well and, unlike most things in this industry, with little controversy. Any customer who wants a toll-free number simply contacts one of more than 200 “Responsible Organizations” or “RespOrgs” that use SMS/800 service. Any entity meeting certain specified criteria can qualify as a RespOrg. For example, a RespOrg can be an interexchange carrier, a local telephone company, a wireless carrier, a large organization or even an individual. The RespOrg accesses the SMS/800 system and reserves a toll free number from among the pool of available numbers, and the SMS/800 system updates regional toll-free database tables with the information needed to deliver calls to the correct carrier.

Beehive Telephone Company was a RespOrg and used SMS/800 services after the Bell companies’ tariff became effective in 1993. However, it refused to pay for these services, claiming that, as a carrier, it could not be required to buy these services pursuant to a tariff. Rather, it said that it had a right to contract for them. Beehive also filed a formal complaint against the Bell companies, claiming that the tariff was invalid because the Commission lacked authority to require that the service be tarified.

Federal court litigation ensued, with claims and counterclaims, and the court hearing the case referred a number of Beehive’s claims to the Commission.

Responses to the Commission’s Questions

1. Whether the SMS/800 system may be provided under tariff, as it is currently, or must be provided under intercarrier agreements pursuant to sections 251 and 252 of the Act, 47 U.S.C. §§ 251 and 252.

The Commission ordered the Bell companies to provide this service under tariff, and, therefore, that is the way it must be provided.³

SMS/800 service should not be brought within the section 251/252 regime. First, that regime is limited to carriers, and non-carriers can and do use SMS/800 service.

More important, that regime is designed for individual negotiations between two carriers for services or facilities in a particular geographic area. It permits a carrier to get loops from Bell Atlantic in Massachusetts, switching from SBC in Missouri and residence service at wholesale prices from U S WEST in Montana. And it gives the regulators in a state authority over the prices charged for the services and facilities in their state. There is one, single nationwide SMS/800 service, however, which is jointly provided by the four Bell companies. Under a 251/252 regime, individual state commissions could come up with different rates for the exact same service, disadvantaging carriers that asked for the service in the “wrong” jurisdiction.

2. Whether DSMI is an impartial administrator of the SMS system, under section 251(e).

As the NANC⁴ and the Commission’s staff⁵ have explained, DSMI is impartial.

More important, however, the whole toll-free number administration system is impartial. The SMS/800 functions tariff contains the prices, terms, and conditions of access to the SMS/800 system, as well as eligibility requirements for RespOrgs and a list of RespOrg responsibilities.

³ The Bell companies had argued that SMS/800 service was not a communication service subject to Title II (see *CompTel Declaratory Ruling* ¶ 23), but did not challenge the Commission’s decision.

⁴ Letter from Alan C. Hasselwander to Richard Metzger, dated March 25, 1998.

⁵ Brief of Federal Communications Commission at 42 n.69, *Beehive Telecommunications. Co. v. FCC*, Civ. Act. No. 97-1662, D.C. Cir. (June 23, 1998).

Like any other tariffed service, the Commission requires that SMS/800 functions be provided on a nondiscriminatory basis.⁶

And access to SMS/800 functions has in fact been provided on a nondiscriminatory basis. As the Chief of the Common Carrier Bureau has recognized, no party has ever “alleged specific acts of discrimination by the BOCs or Bellcore in connection with the 800 database.”⁷ In fact, both AT&T and Sprint commended the manner in which the service is provided. According to AT&T, “the 800 SMS database administration is currently functioning in a problem-free manner” and “AT&T knows of no instances of discriminatory conduct by DSMI.”⁸ Likewise, Sprint emphasizes “that DSMI’s performance to date has been satisfactory.”⁹

The tariffing requirement ensures that toll free numbers are administered in an impartial way: The Bell companies provide the RespOrgs with access to the SMS/800 database on nondiscriminatory terms and conditions, and the individual RespOrgs select toll free numbers on a first-come, first-served basis. Since the RespOrgs obtain nondiscriminatory, direct electronic access to the national database, they are able to reserve numbers themselves without the intervention of any other entity and without fear of favoritism. Section 251(e)’s requirements are thus satisfied.

⁶ *CompTel Declaratory Ruling* ¶¶ 20-21.

⁷ Letter from Kathleen Wallman, Chief, Common Carrier Bureau, to James S. Blaszak, Gardner Carton & Douglas et al. at 2 (June 21, 1995) (“Wallman Letter”).

⁸ Comments of AT&T Corp. at 4 (May 22, 1997).

⁹ Comments of Sprint Communications Company, L.P. at 2 (May 22, 1997).

3. Whether the SMS/800 system complies with section 251(e)(2), which requires the costs of number administration arrangements and number portability to be borne by all carriers on a competitively neutral basis.

There is disagreement in the industry about whether SMS/800 service is “number administration,” but even if it is, it complies with section 251(e)(2).

Toll-free number administration benefits two types of carriers — those that provide toll-free services and those that have toll-free databases to provide access services. These two groups of carriers bear the costs, on a competitively neutral basis, of this system.

4. Whether DSMI may legally discontinue providing SMS/800 service.

DSMI does not provide SMS/800 service, the Bell companies do, and the Bell companies may legally discontinue providing SMS/800 service in the same manner in which they can discontinue providing any tariffed service. They may also discontinue providing service to an individual customer who has violated the terms of the tariff, such as by refusing to pay for the service.

5. Whether DSMI may administer the SMS/800 system under tariff even though it is not a common carrier.

DSMI does not administer the SMS/800 system, the Bell companies (which are all carriers) do. And they have hired DSMI, just as they hire many non-carriers, to assist them in the provision of their services.¹⁰

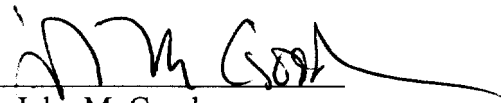
¹⁰ Section 217 Act recognizes that carriers may act through other entities in providing services under the Act.

7. Whether Beehive held a constitutionally protected property interest in toll free numbers that DSMI violated by discontinuing service to Beehive.

The Commission has repeatedly held that neither carriers nor customers have a property right in telephone numbers.¹¹ Therefore, there can be no constitutional issue.

Respectfully submitted,

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¹¹ *E.g., Need To Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 2 FCC Rcd 2910, 2912 (1987).

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